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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 505

STATE OF ALABAMA,
Petitioner,

v.

PLANTATION PIPE LINE COMPANY,
Respondent.

On Petition for Certiorari to the Supreme Court of Alabama

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

Since the petition was filed, the opinion of the Alabama Supreme Court has been unofficially reported at 89 So. 2d 549 (1956).

QUESTIONS PRESENTED

The statement of the questions presented in the petition is substantially inaccurate and misleading, when read in the light of the decision sought to be reviewed.

The questions which are necessarily involved can best be seen by looking at the actual decision below. The Alabama Supreme Court stated the questions which it was deciding as follows (89 So. 2d at 554; Appendix A of Petition, pp. 37, 38):

"The questions involved in this case may be stated as follows: (1) Was Plantation Pipe Line Company engaged solely in interstate commerce in Alabama in 1952? (2) Assuming that the first question is answered in the affirmative, does the Alabama Foreign Corporation Franchise Tax purport to levy a tax on a foreign corporation engaged solely in interstate commerce in Alabama? (3) Is the Alabama Franchise Tax as here imposed unconstitutional as violative of the Interstate Commerce Clause of the United States Constitution? (4) Are the proceedings with respect to the 1942 Franchise Tax res adjudicata on the issue in this case?"

The court dealt with the questions in that order,* sustaining the trial court on all points.

As to the first question, it held:

"Taking the undisputed facts in the case, we consider that the court correctly held that Plantation was engaged exclusively in interstate commerce in Alabama in 1952." (89 So. 2d at 554; Appendix A of Petition, p. 38)

As to the second question, the court held:

"The Alabama franchise tax on foreign corporations is not applicable to foreign corporations doing an exclusively interstate business in Alabama. . . .

"A study of the history of the franchise tax, including amendments made after the *Anglo-Chilean* decision, supra, and the constitutional provision under which it was levied and the decisions of this court demonstrate to us that the franchise tax on foreign corporations is only applicable to foreign corporations actually doing an intrastate business in this State." (89 So. 2d at 560; Appendix A of Petition, pp. 50, 51)

Those two holdings obviously disposed of the case, and

* The reversal of the order of the second and third questions by the petition (p. 6) gives a misleading emphasis to the hypothetical and unnecessary discussion of the constitutional question.

they present no question within the proper scope of this Court's jurisdiction.

A majority of the court then proceeded to hold that

> "The Alabama franchise tax if applicable to a foreign corporation engaging exclusively in interstate commerce in Alabama would be unconstitutional." (89 So. 2d at 563; Appendix A of Petition, p. 56)

The court thus dealt with the constitutional question sought to be raised here by the petition expressly as a hypothetical question. It was not required for the disposition of the case, as was observed by Mr. Justice Lawson in concurring:

> ". . . . Since the Court holds those statutes to be applicable only to intrastate business and that the taxpayer is engaged exclusively in interstate business, there is no occasion to write to the constitutional question. . . ." (89 So. 2d at 569; Appendix A of Petition, pp. 68, 69)

STATEMENT OF THE CASE

Petitioner's statement of the facts is inadequate and misleading. Since, however, the responsibility for reviewing the facts is not a function of this Court in this case and the statement is irrelevant to the issues on this petition, we do not undertake a fuller statement. The opinion of the Alabama Supreme Court contains a full and complete statement of the facts (89 So. 2d 551-554; Appendix A of Petition, pp. 31-37).

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

The petition for certiorari in this case is solely an attempt on the part of the State of Alabama to have this Court

undertake to review a decision of the Alabama Supreme Court construing and applying the franchise tax statutes of the state to the particular facts of the respondent's business as shown by the record.

The Alabama Supreme Court held that the Alabama statute is properly to be interpreted as not intending to levy the franchise tax under the circumstances found by both it and the trial court.

The application of the state statute to the facts of the case by the state court was wholly independent of any federal question, constitutional or otherwise. That construction and application of the state statute completely disposes of the case, and there is, accordingly, nothing for this Court to review.

Although the courts below both discussed the alternate basis for their decisions and sustained respondent's contention that, if construed as applicable, the statute would offend the commerce clause, this part of the opinion was not necessary to the actual decision that the tax was not due, as pointed out by one of the concurring justices (89 So. 2d at 569; Appendix A of Petition, p. 68). A different decision on the constitutional question would not change the result, and hence there is no reviewable question here.

The State would have this Court review the findings of both lower courts that Plantation was engaged only in interstate commerce in Alabama. This is basically a determination of fact. If this finding were made the basis of a holding necessary to the ultimate decision that the state statute was applicable but as it applied subjected to the commerce clause, it would be subject to subsequent review by this Court as a necessary part of the determination of a properly presented federal question. But the finding below as to the nature of Plantation's business was made by both state courts as an inherent part of and basis for the construction and application of the state statute and whether it was right or wrong is no concern of this Court.

In *State Tax Commission* v. *Van Cott*, 306 U. S. 511, 514 (1939), this Court said:

> ". . . . If the court were only incidentally referring to decisions of this Court in determining the meaning of the State law, and had concluded therefrom that *the statute was itself intended to grant exemption to respondent*, this Court would have no jurisdiction to review that question." (Emphasis added.)

That is exactly the situation here. The Supreme Court of Alabama carefully separated out its discussion of federal constitutional law, placing it by itself in the subdivision numbered III (89 So. 2d at 563; Appendix A of Petition, p. 56) and dealing with it on a purely hypothetical basis.

In any event the unanimous conclusion of the state judges who considered the undisputed facts of record here, that Plantation was not engaged in intrastate business within the intent of the state statute, is so clearly correct as to be beyond reasonable debate and is not in conflict with any decision of this Court. The brief summary of the facts in the petition (pp. 6-10) is seriously deficient. The statement of facts in the opinion below (89 So. 2d at 551-553; Appendix A of Petition, pp. 31-37) shows the relatively simple and clear-cut nature of the respondent's business, which was accurately summed up in the following three sentences:

> Plantation Pipe Line Company was in 1952 and at all times has been a common carrier pipe line company within the meaning of the Interstate Commerce Act, operating solely under tariffs filed with the Interstate Commerce Commission.
>
> Plantation Pipe Line Company has never filed nor sought approval of its rates and tariffs by the State of [illegible] or any other state and the State of Alabama has never asserted any regulatory authority or jurisdiction

over any of the rates or practices of the Plantation Pipe Line Company." (89 So. 2d at 551; Appendix A of Petition, p. 32)

"All of the business, activities and operations of the Plantation Pipe Line Company in Alabama are carried on solely in furtherance of and are inherent, integral and necessary parts of the interstate transportation of petroleum products." (89 So. 2d at 553; Appendix A of Petition, p. 36)

That the petition is essentially only an attempt to review the Alabama Supreme Court's interpretation of Alabama law is ingenuously but quite explicitly stated. Under the heading "Reasons for Granting the Writ" (Petition, p. 11), the statement is made that neither the Alabama statute nor its constitution "contains any prohibition whatsoever, either expressly or by implication, precluding the State from levying this tax on a corporation engaged exclusively in interstate commerce."

This astonishing assertion is simply a direct contradiction of the perfectly clear and precise holding of the Supreme Court of Alabama in this case.

That egregious misstatement of the effect of the Alabama constitution and statute is the sole basis for the asserted federal question. The petition follows that contradiction of the court's holding with this obviously unfounded statement:

". . . . Therefore, the only reason for the Circuit Court of Montgomery County, Alabama, and the Supreme Court of Alabama holding that Respondent Pipe Line Company was engaged exclusively in interstate commerce in Alabama in 1952 was for the purpose of construing the Commerce Clause of the Federal Constitution."

The real thrust of the petition is thus frankly stated (Petition, pp. 25-26):

". . . . This holding by the Alabama Supreme Court is completely unrealistic and totally out of keeping with Title 51, Section 348, Code of Alabama, 1940, and Section 232 of the Alabama Constitution, 1901 . . . .

". . . .

"We believe that in all fairness and justice, this Court should clarify this very confused situation by construing the tax realistically, and as it really is, for the purpose of determining the very important Federal questions which are here involved."

This effort to bring to this Court a question of state statutory construction is said to be supported by the cases holding that the Court is "not bound by the interpretation placed on a state taxing statute by a state Supreme Court, where such interpretation appears to be unrealistic and where it vitally affects (as in this case) the important Federal questions involved" (Petition, p. 26).

The cases cited do not support the statement and are plainly inapplicable here. As this Court observed in *Society for Savings* v. *Bowers*, 349 U. S. 143, 151 (1955), it "would be bound by the state court's decision as to what rights and liabilities this statute establishes under state law." It is the state court's *characterization* of these rights and liabilities (usually taking the form of a statement of what or whom the tax is "on,") that is not binding on this Court, for the obvious reason that otherwise a state could get away with any tax, however flagrantly unconstitutional, simply by giving it a constitutional name. But this Court leaves the actual *determination* of the rights and liabilities under the tax to the state court, and will only step in to say whether the rights and liabilities thus determined are permissible. Any other result would be in direct conflict with the rule this Court has undeviatingly followed throughout its history, that the appellate jurisdiction over the state courts conferred by Congress is to be interpreted as extending only to federal questions. *Murdock* v. *City of Memphis*, 20 Wall. 590 (1875).

CONCLUSION

The petition presents only a question as to the interpretation and application of a state statute by the state supreme court, which was decided antecedently to and independently of any federal question. It should be denied.

Respectfully submitted,

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